

Remarks

The Applicants note with appreciation the withdrawal of the previous rejection based on Maurer.

The Applicants have amended the Specification to place it into final condition for allowance. Entry into the official file is respectfully requested.

Claims 1-3 and 5-7 stand rejected under 35 USC §102 as being anticipated by or under 35 USC §103 as obvious over Aranishi. The Applicants note with appreciation the Examiner's detailed comments hypothetically applying Aranishi against those claims. The Applicants nonetheless respectfully submit that Aranishi is inapplicable under both of §102 and §103. Details reasons are set forth below.

The rejection frankly acknowledges that Aranishi does not disclose the diameter of filaments, the claimed molecular weight of the acyl units, initial tensile modulus, glass transition temperature (T_g) or CV properties. The Applicants agree. The rejection thus takes the position that the diameter of the filament would be obvious and that the other claimed features not disclosed by Aranishi would be inherent. The rejection thus invites the Applicants to "prove" otherwise.

The Applicants respectfully submit that they are not required to prove that the claimed features that are not disclosed are not inherent. The MPEP is quite clear on the requirements for rejecting claims under inherency. In that regard, MPEP §2112 states that the physical characteristic that is allegedly inherent must "necessarily" be present in the prior art. It is not enough that the claimed characteristic might be present, could be present or is even likely present. The bar for demonstrating inherency is that the claimed characteristic must "necessarily" be present. The Applicants will demonstrate below that the claimed properties are not "necessarily" present. Moreover, the Applicants can indeed "prove otherwise."

In that regard, the fibers produced by Aranishi are as the rejection points out, melt-spun fibers comprising a mixture of a thermoplastic mixed cellulose ester and a plasticizer. That is, however, where the problems with the rejection begin. The melt-spun fibers of Aranishi comprising a thermoplastic mixed cellulose ester and a plasticizer have physical characteristics caused by those components and the method in which the melt-spun fiber is made. Those fibers are, however, different from what the Applicants claim. Referring to Claim 1, the Applicants'

claim a woven fabric or a knitted fabric at least partly comprising cellulose acetate propionate continuous filament with a glass transition point (T_g) of 160°C or more, a strength of 1.3 to 4 cN/detex and a coefficient of variation in single yarn fineness of 10% or less. The Applicants respectfully submit that those physical characteristics as recited in Claim 1 are not “necessarily” the same as the physical characteristics of the Aranishi melt-spun fibers as is required to maintain a rejection based on inherency.

That is because the Applicants produce their claimed woven fabric or knitted fabric in a different way from the manner in which the melt-spun fibers of Aranishi are produced. The Applicants produce a melt-spun fiber by utilizing the cellulose acetate propionate and a plasticizer. However, the Applicants remove the plasticizer from the fiber prior to the fiber being heat set. Then, the resulting melt-spun fiber, which is substantially free of the water soluble plasticizers, is employed in the woven or knitted fabric. As a consequence, the Applicants’ physical characteristics of the fibers in their claimed woven or knitted fabrics are quite different.

This is factually demonstrated by referring to the Examples and Comparative examples in the Applicants’ Specification. Also, Table 1 of the Applicants’ Specification on page 32 reveals these important differences.

The Applicants specifically invite the Examiner’s attention to Example 1 on pages 22-24 of the Specification. The melt-spinning process is described in paragraph [0073] on page 23. Then, the important step of removing the plasticizer is described in paragraph [0074] on page 24. In that regard, the hot melt-spun fiber is rinsed with water to remove the plasticizer and following that removal of the plasticizer, the fiber is dried at an elevated temperature. Then the resulting fibers are used to produce a knitted fabric.

In comparison, the Applicants invite the Examiner’s attention to Comparative example 1 which is described in the Applicants’ paragraphs [0085], [0086] on pages 25 and 26. The procedure used in Comparative example 1 was exactly the same in Example 1 except that the plasticizer was not removed. This produces different physical characteristics as can be seen by referring to Table 1 on page 32. Specifically, Example 1 produces a knitted fabric wherein the glass transition point (T_g) of the filaments is 185°C, which is within the claimed range of the glass transition point (T_g) of 160°C or more. In sharp contrast, Comparative example 1


produces a knitted fabric wherein the filaments have a glass transition point (Tg) of 115°C. That glass transition point (Tg) is outside of the Applicants' claimed range of 160°C or more.

This is important because the fibers produced in Comparative example 1 as set forth in the Applicants' Specification are essentially the same as the melt-spun fibers produced by Aranishi. Those melt-spun fibers as acknowledged in the rejection comprise thermoplastic mixed cellulose ester and a plasticizer. This is contrasted to the Applicants' claimed woven or knitted fabrics that employ filaments wherein the plasticizer is removed prior to final drying of the fibers. This means that the woven or knitted fabric as claimed by the Applicants has physical characteristics that are different from physical characteristics of the melt-spun fibers of Aranishi.

The Applicants therefore respectfully submit that they have conducted a side-by-side, direct comparison between melt-spun fibers of Aranishi---in the form of Comparative example 1 taken from the Applicants' Specification---and the Applicants' woven or knitted fabrics as taken from the Applicants' Example 1 in their Specification. Those examples represent actual work conducted by the Applicants and submitted under oath in their original Combined Declaration. Thus, the Applicants respectfully submit that these are facts on the record which prove that the physical characteristics of the melt-spun fibers of Aranishi are not "necessarily" the same as the physical characteristics recited in Claim 1. In fact, the Applicants respectfully submit that the evidence of record now demonstrates that not only are the claimed physical characteristics not "necessarily" the same, but they are most likely "necessarily" different. As a consequence, the Applicants respectfully submit that the rejection based on Aranishi cannot satisfy the high burden set forth by the MPEP with respect to establishing inherency. As a result, the Applicants respectfully submit that the rejection based on Aranishi under §102 and §103 cannot be maintained. Withdrawal of the rejection is respectfully requested.

In light of the foregoing, the Applicants respectfully submit that the entire Application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



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